

**ASSEMBLY BILL**

**No. 2804**

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**Introduced by Assembly Member Brown**

February 19, 2016

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An act to add Section 50035 to the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 2804, as introduced, Brown. Cities and counties: legal services: contingency fee contracts.

Existing law authorizes a city to hire a city attorney or a county to hire a county counsel for the representation of the city or county in legal matters.

This bill would require a city council or the board of supervisors of a county to, prior to entering into a contingency fee contract for legal services relating to civil litigation initiated by the city or county, make a determination that use of a contingency fee contract would be cost-effective and in the public interest. The bill would require this determination to be supported by specified findings and would require any contract entered into by the city or county for legal services on a contingency fee basis under these provisions to meet specified requirements and would provide that any contingency fee shall be calculated on the basis of the judgment amount excluding any award for fine, civil penalty, or punitive damages.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open

meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 50035 is added to the Government Code,  
2 to read:

3 50035. (a) Prior to entering into a contingency fee contract  
4 for legal services relating to civil litigation initiated by the  
5 legislative body, the legislative body shall make a determination  
6 that use of a contingency fee contract would be cost effective and  
7 in the public interest. In making this determination, the legislative  
8 body shall make written findings in support of using a contingency  
9 fee contract. These findings shall include, but are not limited to,  
10 the following:

11 (1) Whether the existing legal and financial resources within  
12 the city attorney or county counsel's office would be sufficient to  
13 handle the matter.

14 (2) The time and labor required, the novelty, complexity, and  
15 difficult of the questions involved, and the skill requisite to perform  
16 the attorney services properly.

17 (3) The geographic area where the attorney services are to be  
18 provided.

19 (4) The amount of experience desired for the particular type of  
20 attorney services to be provided and the nature of the contract  
21 attorney's experience with similar issues or cases.

22 (b) After making the determination and findings required by  
23 subdivision (a), the legislative body shall draft and prominently  
24 post on the city or county's Internet Web site a written request for  
25 proposals to represent the city or county on a contingency fee basis.

26 (c) Any contingency fee contract shall include the following  
27 provisions:

28 (1) The lead attorney within the office of the city attorney or  
29 county counsel who is assigned to the matter, or the legislative  
30 body if the city or county does not have one, shall retain complete  
31 control over the course and conduct of the case.

1 (2) An attorney within the office of the city attorney or county  
2 counsel who has supervisory authority, or the legislative body if  
3 the city or county does not have one, shall be personally involved  
4 in the oversight of the litigation.

5 (3) The lead attorney within the office of the city attorney or  
6 county counsel assigned to the matter, or the legislative body if  
7 the city or county does not have one, shall retain the authority to  
8 reject any decisions made by the contracted attorney.

9 (4) Any defendant that is the subject of litigation may contact  
10 the lead attorney within the city attorney or county counsel's office  
11 directly, or the legislative body if the city or county does not have  
12 one, without having to confer with the contracted attorney.

13 (5) An attorney within the office of the city attorney or county  
14 counsel who has supervisory authority, or the legislative body if  
15 the city or county does not have one, shall attend all formal or  
16 informal settlement conferences.

17 (6) All decisions regarding settlement of the matter shall be  
18 exclusively reserved to the discretion of the lead attorney within  
19 the office of the city attorney or county counsel, or the legislative  
20 body if the city or county does not have one.

21 (7) The contracted attorney shall provide the city attorney or  
22 county counsel, or the legislative body if the city or county does  
23 not have one, a written status report on at least a monthly basis  
24 that includes a description of any significant court hearings,  
25 conferences, motions, or discovery and sets forth the anticipated  
26 legal strategy for the following month.

27 (d) (1) A copy of any executed contingency fee contract for  
28 legal services shall be prominently posted on the city or county's  
29 internet Web site for public inspection within five days after the  
30 date the contract is executed and shall remain posted on the Web  
31 site for the duration of the matter.

32 (2) Any payment of a contingency fee pursuant to a contingency  
33 fee contract for legal services shall be prominently posted on the  
34 city attorney or county counsel's Internet Web site within 15 days  
35 following the payment to the attorney or law firm and shall remain  
36 posted on the Internet Web site for at least one year following the  
37 issuance of the payment.

38 (e) The calculation of a contingency fee shall not include any  
39 portion of the judgment that is attributable to a fine, civil penalty,  
40 or punitive damages.

(f) Any private attorney or firm under contract to provide legal services to a legislative body pursuant to a contingency fee contract shall maintain detailed records of their services including, but not limited to, records of all expenses, disbursements, charges, credits, invoices, and hours billed or worked under the contract by the private attorney or paralegal in increments no greater than  $\frac{1}{10}$  of an hour. These records shall be maintained by the legislative body for at least four years from the conclusion of the contract. These records shall be available for inspection under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), subject to any redaction authorized by that act.

(g) This section shall not be construed to expand the authority of any local agency to enter into a contract for legal services where no authority previously existed.

SEC. 2. The Legislature finds and declares that Section 1 of this act, which adds Section 50035 to the Government Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

It is in the public interest for contracts entered into by a city or county for legal services based on a contingency fee to be open and transparent, therefore, this act would further the purposes of Section 3 of Article 1 of the California Constitution.